IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1977 of 2005

Between:

S. Lakshmipathi S/o S. Late Nagasayanna
D. No. 2-31-13, Srinagar Kakinada, East Godavari District

..... PETITIONER

AND

1 Assistant Divisional Engineer, Operation/ A.P. Transco, Kainada Town, Kakinada East Godavari District
2 The Divisional Engineer, Operation, Kakinada East Godavari District
3 The Assistant Accounts Officer, Electricity Revenue Officer, kakinada, East Godavari District
4 The Divisional Engineer/Assessments/APTRANSCO., Rajahmundry, East Godavari District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of mandamus declaring the Notice Lr. no. ADE/ O/ T/ KDA/Sub.Er/D.NO. 2034 dt 19-1-2005 issued by the 1st Respondent, as illegal, arbitrary, violtive of Articles, 14, 19(1)(g) and 21 of the Constitution of India and violtive of the principles of natural justice and consequently direct the Respondents herein to restore the electricity supply of service connection No. SC. No. C9647 pertaining to petitioner's shop, situated at D. No. 2-31-13 srinagar, Kakinada, East Godavari District.

Counsel for the Petitioner:MR.A.V.SESHA SAI

Counsel for the Respondents :Mr.M.Subbarao

The court at the admission stage made the following:

ORDER:

The petitioner is running a flour-mill at Kakinada and is extended power supply through Service Connection No.C9647. An inspection was conducted on 08.01.2005 by the officials of the A.P.Transco. It was noticed that there was defective reading of the consumption and it was opined that energy worth Rs.1,53,060/- was pilfered by the petitioner. An order of provisional assessment, dated 19.01.2005 was issued indicating the said fact. It was also pointed out that in case the petitioner wants continuation of power supply, he shall deposit half of the said amount being Rs.76,530/-. The petitioner challenges the same.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

As on today, the petitioner is served with an order of provisional assessment. Under Section 126 of the Electricity Act, 2003, further steps are required to be taken in the form of issuing a show cause notice and passing an order of final assessment. The liability of a customer to pay any amount would arise, if only an order of final assessment is passed. Till then, no liability can be fastened upon him.

A Division Bench of this Court in W.A.Nos.452 and 477 of 2004 held that a consumer cannot be required to pay any amount on the strength of an order of provisional assessment nor the power supply can be disconnected for non-payment of the same.

For the foregoing reasons, the writ petition is allowed and it is directed that the respondents shall restore the power supply to the petitioner forthwith, without insisting on payment of any amount indicated in the order of provisional assessment. The liability of the petitioner would arise only after an order of final assessment is passed. The petitioner shall however be liable to pay the regular consumption charges. There shall be no order as to costs.

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09.02.2005

Note: Issue C.C. by tomorrow.

(B/o)

Jsu

To

1 Assistant Divisional Engineer, Operation/ A.P. Transco, Kainada Town, Kakinada East Godavari District
2 The Divisional Engineer, Operation, Kakinada East Godavari District
3 The Assistant Accounts Officer, Electricity Revenue Officer, kakinada, East Godavari District
4 The Divisional Engineer/Assessments/APTRANSCO., Rajahmundry, East Godavari District